

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5484 OF 2004

Municipal Corporation of Greater Mumbai ...Applicant

VS.

Homi A. Sanjana & Anr. ... Respondents

Ms Teja Katdare with Ms T.H.Puranik for the Applicant
Mr.A.S.Shitole A.P.P. for State
Mr.V.C.Gupte for Respondent No.1

CORAM: A.S.OKA, J.
DATE : NOVEMBER 20, 2006.

P.C.:

1. I have heard the learned Counsel for the Applicant, learned Counsel for the first Respondent and the learned A.P.P. for the State. This is an Application filed under section 378 (4) of Code of Criminal Procedure, 1973 by the Mumbai Municipal Corporation. By the impugned Judgment and Order dated 8th September 2004, the learned Metropolitan Magistrate, 41st Court, Mumbai acquitted the first Respondent of the offence under section 381 read with section 471 of the Mumbai Municipal Corporation Act, 1881.

2. According to the case of the Applicant, the first Respondent is occupying a flat on the first floor of a building Karani Mention situated at Parsi Colony, Dadar. P.W.No.2 Rustom Tirandaz is residing in a residential premises on the ground floor of the said building. According to the case of the prosecution, there was a leakage in the flat of

P.W.No.2 from the flat occupied by the first Respondent. A Junior Engineer of the Applicant inspected the premises in question on 7th October 1999 on the basis of the complaint made by the P.W.No.2. According to the case of the prosecution, the said Junior Engineer noticed that there was leakage from the toilet block of the first Respondent-accused. As a result, there was percolation in the kitchen in the premises occupied by the P.W.No.2. Notice under section 381 of the said Act of 1881 was issued to the first Respondent and he was asked to arrest the leakage from his toilet block within a period of 15 days from the date of receipt of notice. According to the Applicant, compliance was not made with the said notice and therefore, a private complaint was filed by the Applicant.

3. Perusal of the Judgment of the learned Trial Judge shows that he has considered the evidence of all the prosecution witnesses and documentary evidence on record. On the Application made by P.W.No.2, M/s.Mahimtura Consultant Pvt.Ltd. and Shri U.D.Chande, both Consulting Engineers were appointed to inspect the building and to submit reports. At the time of inspection carried out by both the experts, the P.W.No.2 and the first Respondent were present. The separate reports submitted by the experts have been duly exhibited. The learned Judge referred to the reports of the experts. The learned Judge referred to the report of M/s.Mahimtura

Consultants Pvt.Ltd., consulting engineers. The said report records that the leakage in the residential premises of P.W.No.2 was due to various factors and the poor maintenance of the structure. The expert also noticed that there was percolation and dampness in the walls of the first Respondent. The said expert recommended major repairs to the entire structure and in particular inside the flat of the first Respondent.

4. Shri U.D.Chande stated in his report as under :
 - . "Judging by the separation of the toilet wall from the external load bearing wall on the 1st floor, it is clear that the I beams supporting the slab (as provided by Mr.Tirandaz) have deflected slowly but surely. The cracks in Mr.Sanjana's toilet wall are also primarily due to this deflection and secondly due to leakage into it from the upper 2nd floor.
 - . Here I wish to make a statement that the condition of the building is not at all satisfactory, going by the condition of the Ground and 1st floor as seen in our visit. The considerable repairs required should be carried out under the guidance of a Registered Structural Engineer.
 - . Thus it can be stated that the leakage from Mr.Sanjana's toilet is mainly due to the removal of walls and partly due to the bad condition as well as leakages from the 2nd floor of the building.
 - . Thus the leakages in Mr.Tirandaz's flat are due to the leakages in Mr.Sanjana's flat which are due to reasons explained above. The leakages can only be stopped by carrying out complete Structural and Non Structural repairs to the building under the guidance of Registered Structural Engineer."
5. The learned Judge has also considered the evidence of the Junior Engineer who allegedly visited the premises. The said witness stated that the building in question is about 75 to 80

years old. He deposed that the person in occupation of the premises on the second floor has not carried out repairs within the time granted by the Municipal Corporation. He admitted that the first Respondent has made extensive correspondence with the Municipal Corporation.

6. The learned Judge also considered the evidence of P.W.No.2 on whose complaint the Applicant-Municipal Corporation has taken the action. The learned Judge referred to the cross examination of P.W.No.2 who admitted that he had carried out extensive repairs in his flat without permission of the Applicant. The learned Judge also noticed that the first Respondent was not the owner of the premises.

7. Considering the evidence on record, the learned Judge held that the offence is not established. He held that considering the oral and documentary evidence on record and especially the complaints made by the first Respondent, it is not established that the first Respondent was responsible for the nuisance.

8. Considering the opinion expressed by the experts, it is obvious that the view taken by the learned Judge is a possible view which can be taken on the basis of evidence on record. Even assuming that it is possible to take another view on the basis of the same evidence, it is not possible to interfere in an Appeal against acquittal. Considering the facts and

circumstances of the case, no case is made out for grant of leave. Application is rejected.

JUDGE